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9

10 UNITED STATES DISTRICT COURT FOR THE  
11 EASTERN DISTRICT OF WASHINGTON  
12 HONORABLE WM. FREMMING NIELSEN

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 vs.

16 GERALDINE MICHELLE NEWELL

17 Defendant  
18

No. CR-18-221-WFN-1

PSIR OBJECTIONS

SENTENCING: JUNE 4, 2020 AT  
10:30 A.M.

19  
20 TO: William Hyslop, United States Attorney E. Dist. WA

21 Patrick J. Cashman, Assistant United States Attorney

22 **I. Introduction and Relevant Factual Basis**

23 Ms. Newell was charged by Indictment dated December 4, 2018 with  
24 two counts of Bank Fraud, in violation of 18 U.S.C. §1344(2) and two  
25

Objections to the PSIR

1 counts of Filing False Tax Returns in violation of 26 U.S.C. §7206(1) as well  
2 as forfeiture allegations. ECF No. 1.

3 Ms. Newell entered a plea of guilty to Count Three of the Indictment,  
4 Filing a False Tax Return in violation of 26 U.S.C. §7206(1) for tax year  
5 2015. ECF No. 77. The charge has a maximum of three years  
6 imprisonment, a fine not to exceed \$100,000, not more than 1 year term of  
7 supervised release, restitution and \$100.00 special penalty assessment.

8 Ms. Newell agreed that the following facts are accurate and form the  
9 basis of the plea of guilty: Ms. Newell filed a false Form 1120S for 2015 for  
10 Center 4 Law, LLC in which gross receipts were understated by \$500,000  
11 and Ms. Newell further filed a false and fraudulent Form 1040 for tax year  
12 2015. Key terms of the plea agreement are as follows: at the time of  
13 sentencing, the United States will dismiss counts one, two and four; the  
14 United States agrees to file no further charges out of this conduct; the  
15 parties make no agreement on base offense level; the United States  
16 believes that the base offense level is increased by an additional two levels  
17 because Ms. Newell failed to report or correctly identify the source of  
18 income exceeding \$10,000 in any year from criminal activity (USSG  
19 2T1.1(b)(1); the parties may argue for victim related adjustments; the  
20 United States believes the base offense level is increased by an additional  
21 two levels because Ms. Newell abused a position of trust (USSG 3B1.3).  
22 The United States and Defendant have no agreements as to the United  
23 States Sentencing Guidelines. The United States agrees to make a  
24 recommendation at the low end of the the applicable guideline range as  
25 determined by the Court and the defendant reserves to ask for departures

Objections to the PSIR

1 and variances. Restitution to the IRS was agreed by Ms. Newell in an  
2 amount in excess of \$200,000 to be determined by the Court at the time of  
3 sentencing.

4 **II. Objections to the Presentence Investigation Report**

5 **1. Offense Conduct, paragraphs 15:**

6 Ms. Newell objects to the characterizations in this paragraph and the  
7 last sentence as well. Ms. Newell's transfers from IOLTA account to  
8 operating accounts is not relevant for purposes of this offense nor is it  
9 relevant conduct. The paragraph includes the characterization that Ms.  
10 Newell was using funds to "enrich" her lifestyle and cites things such as a  
11 new residence, recreational vehicles, and a food truck. Ms. Newell cares  
12 for both her mother and Ms. Bourgeois and the two women reside in the  
13 residence while Ms. Newell lives in the RV on site. The purchases were  
14 designed to benefit Ms. Newell, her mother, and Ms. Bourgeois who  
15 continues to enjoy living with Ms. Newell. The last sentence of the  
16 paragraph should be struck as it is not relevant as to Ms. Newell's transfers  
17 in banking from her IOLTA account with other clients.

18 **2. Offense Conduct, paragraphs 31-33:**

19 Ms. Newell objects to this paragraphs relating to Ms. Devincentis.  
20 These details provided by Ms. Devincentis are unverified and are not  
21 central to the charge in the Indictment.

22 **3. Offense Conduct paragraph 36:**

23 The details contained in paragraph 36 form the basis of Counts One  
24 and Two. Ms. Newell denies that she wrote checks to herself improperly  
25

1 and does not agree that she earned \$311,210.00 yet took \$1,123,403.71.  
2 Ms. Newell objects to the inclusion of this paragraph.

3 **4. Specific Offense Characteristic, paragraph 46:**

4 Ms. Newell objects to specific offense characteristic that she failed to  
5 report a source of income exceeding \$10,000 from criminal activity under  
6 USSG §2T1.1(b)(1). Application Note Four states that “criminal activity”  
7 means any conduct constituting a criminal offense under federal, states,  
8 local, or foreign law. Ms. Newell objects to the application of this guideline.  
9 Ms. Newell’s position has remained consistent throughout this  
10 investigation: she did not commit bank fraud and did not commit any  
11 criminal activity with regards to Ms. Bourgeois. Ms. Newell had a system of  
12 accounting that she had created to track expenses for Ms. Bourgeois for  
13 either her house remodeling project or her health care. Ms. Newell did not  
14 put comments in the memo except to assist her in remembering what the  
15 check was written for.

16 In the case of these two checks Ms. Newell states that she First,  
17 would often wait several months for payment meaning funds were not  
18 always readily available. If Ms. Newell wrote a check for payment of  
19 services provided by her, most of the time it was entered onto Ms.  
20 Bourgeois’s billing statement at that same time and therefore there is not a  
21 memo notation for Ms. Newell.

22 However, at times when Ms. Newell didn't input on Ms. Bourgeois’s  
23 statement at the same time, the memo reminded Ms. Newell of whether it  
24 should be posted to Ms. Bourgeois’s personal care statement or her house  
25 project statement. It merely reminded Ms. Newell that the fees included in

1 the check were for time reimbursement related to one billing statement over  
2 another and included time expended on that issue.

3 Now as for any notations on checks for medical expenses, Ms.  
4 Newell would pay and continue to pay out of her own pocket for all medical  
5 expenses and any devices, prescriptions, co-pays etc despite the fact that  
6 the contract in place provides that Ms. Newell can itemize and bill for those  
7 additional expenses. At the time period connected to the indictment period,  
8 there was a point in time that for Ms. Newell's own memory, she may have  
9 made a payment for personal care and noted (to herself) that Ms. Newell  
10 had also been reimbursed for an expense. Now ultimately, Ms. Newell has  
11 chosen not to go back and itemize and charge the additional funds for  
12 those expenses.

13 There is no clear evidence that this guideline application applies as  
14 there is no evidence of income exceeding \$10,000 from any criminal  
15 activity.

16 **5. Victim Related Adjustment paragraph 47:**

17 Ms. Newell objects to the application of this guideline provision.  
18 USSG §3A1.1(b)(1). Application Note 2 states subsection (b) applies to a  
19 "person who is a victim of the offense of conviction and any conduct for  
20 which the defendant is accountable under §1B1.3. Ms. Bourgeois is not a  
21 victim of the offense of conviction. For Filing a Tax Return, the victim is the  
22 United States and specifically the United States Treasury. This guideline  
23 provision does not apply to Ms. Newell.

24 **6. Adjustment for Role in the Offense, paragraph 48:**  
25

1 Ms. Newell objects to the application of this guideline provision.  
 2 USSG §3B1.3 states if the defendant abused a position of public or private  
 3 trust or used a special skill in a manner that significantly facilitated the  
 4 commission or concealment of the offense, increase by 2 levels. “Special  
 5 Skill” can refer to lawyers. Application Note 4. However, Ms. Newell did  
 6 not use any special skill in the commission of this offense. No matter the  
 7 business, all businesses must file returns. Ms. Newell’s conduct with  
 8 regards to the false tax return was not at all connected to her licensing as  
 9 an attorney. Ms. Newell’s status as an attorney did not significantly  
 10 facilitate the commission or concealment of this offense.

11 Ms. Newell submits the Base Offense Level is 18 with a three level  
 12 adjustment for acceptance of responsibility for a **Final Offense Level of**  
 13 **15. Her Criminal History Category is I. The Advisory Guideline Range**  
 14 **is 18-24 months.**

15 **7. Other Arrests, paragraphs 63-66:**

16 Ms. Newell objects to the inclusion of the detailed factual recitation in  
 17 paragraphs 63-66. The Third Degree Malicious Mischief conduct was  
 18 dismissed and the details were never litigated in Court. Ms. Newell does  
 19 not believe these facts are accurate and requests they be removed as the  
 20 charges were dismissed.

21 **8. Personal and Family Data, paragraph 68:**

22 Ms. Newell notes that William Welker passed away in January 1996.

23 **9. Personal and Family Data, paragraph 69:**

24 Ms. Newell’s sister’s name is spelled Teresa Jo Rice.

25 **10. Personal and Family Data, paragraph 70;**

1 The incident where the police came to the house did not involve a  
2 gun.

3 **11. Personal and Family Data, paragraph 72;**

4 Ms. Newell moved to Ohio, not North Dakota.

5 **III. Conclusion**

6 Ms. Newell submits the following objections and corrections to the  
7 Draft PSIR. A sentencing memo with additional details surrounding Ms.  
8 Newell, her relationship to Ms. Bourgeois, and requested variances from  
9 the advisory guideline range will follow.

10 Respectfully Submitted this 10th day of May, 2020.

11 s/ Roger J. Peven  
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19 **CERTIFICATE OF SERVICE**

20 I hereby certify that on May 10, 2020, I electronically filed the  
21 foregoing with the Clerk of the Court using the CM/ECF System which will  
22 send notification of such filing to the following: Patrick Cashman, Assistant  
23 United States Attorney.

24 s/ Roger J. Peven  
25 WA 6251  
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